



General Assembly

Substitute Bill No. 617

January Session, 2001

AN ACT CONCERNING FULL DISCLOSURE OF PREPAID FUNERAL SERVICE CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-200 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) For the purposes of this section and sections 42-201 to [42-206]
4 ~~42-207~~, inclusive, a funeral service contract means a contract which
5 requires the payment of money or the delivery of securities in
6 exchange for the final disposition of a dead human body, including
7 funeral, burial or other services, or the furnishing of personal property
8 or funeral merchandise in connection with any such disposition,
9 wherein the use or delivery of such services, property or merchandise
10 is not required immediately.

11 (b) A funeral service contract shall contain: (1) A consumer notice as
12 set forth in subsection (c) of this section; (2) the name, business address
13 and telephone number of the escrow agent who will administer the
14 consumer's funds; (3) a statement advising the consumer to avoid
15 fraud by contacting the escrow agent to verify the disposition of such
16 funds (A) if the consumer has not received verification, not later than
17 forty-five days after signing the funeral service contract, that the
18 escrow agent has deposited the consumer's funds, or (B) if the
19 consumer fails to receive an annual statement of the consumer's

20 account; (4) if applicable, a clear and conspicuous statement that the
21 consumer may be liable for additional funds for such contracted
22 services, property or merchandise; and (5) a clear and conspicuous
23 statement as to whether the funeral service contract is revocable or
24 irrevocable together with an explanation of the term revocable or
25 irrevocable, as applicable.

26 (c) The consumer notice shall be on a separate page and in a form
27 substantially similar to the following:

28 "A funeral service contract ensures, upon payment of a sum of
29 money, that the funeral service establishment will provide certain
30 funeral services, property or merchandise at a future date.

31 If you purchase a funeral service contract, you must receive (1)
32 notice of the investment options offered by the funeral service
33 establishment; (2) a statement of the fees charged by the escrow agent,
34 (the person who will be holding your funds) if any, to the escrow
35 account or the consumer for investing and managing such funds; and
36 (3) a statement concerning the transferability of the funds to other
37 investment options and whether the funeral director, association of
38 funeral directors or other entity may share compensation from the
39 escrow agent.

40 An escrow agent must be either a bank, a licensed insurance
41 company or a registered broker-dealer.

42 You must receive an annual statement of income and expenses for
43 the escrow funds.

44 The funeral service contract must provide that if specified
45 merchandise is not available, only merchandise of at least equal quality
46 and similar style may be substituted.

47 It is important for you to:

48 (A) Verify the services, property and merchandise that are to be
49 provided as part of the funeral;

50 (B) Ensure that the costs of the services, property and merchandise
51 are explained;

52 (C) Verify whether you will need to provide any additional money
53 for such services, property and merchandise;

54 (D) Determine who will receive any surplus funds in the event the
55 funds in the escrow account exceed the cost of the contracted funeral
56 services, property and merchandise;

57 (E) Obtain the name, address and telephone number of the person
58 who will be holding your funds (known as an escrow agent);

59 (F) Contact the escrow agent if, by the forty-fifth day after you sign
60 the funeral service contract, you do not receive verification that the
61 escrow agent has received and deposited your funds."

62 Sec. 2. Section 42-201 of the general statutes is repealed and the
63 following is substituted in lieu thereof:

64 (a) No person, firm or corporation shall enter into a funeral service
65 contract to provide such services, property or merchandise unless such
66 person, firm or corporation is licensed in accordance with the
67 provisions of chapter 385. No person may arrange, promote or sell any
68 funeral service contract on behalf of a funeral service establishment
69 unless such person is an embalmer or funeral director licensed in
70 accordance with the provisions of chapter 385 and bonded in
71 accordance with subsection (b) of this section.

72 (b) Each funeral service establishment that enters into a funeral
73 service contract to provide such service, property or merchandise or
74 arranges, promotes or sells a funeral service contract shall obtain a
75 bond written by a surety authorized to write such bonds in this state,
76 of a sum of not less than fifty thousand dollars, except that any owner
77 of not less than five nor more than ten funeral service establishments
78 shall provide a bond or series of bonds of a sum not less than two
79 hundred and fifty thousand dollars and any owner of ten or more

80 funeral establishments shall provide a bond or series of bonds of a sum
81 not less than five hundred thousand dollars. Such bond or bonds shall
82 be conditioned upon such establishment truly and faithfully
83 accounting for all funds received relative to a funeral service contract.

84 (c) Any person damaged by the wrongful conversion of funds paid
85 for a funeral service contract may proceed on such bond against the
86 principal or surety thereon, or both, to recover damages, which shall
87 include reasonable attorneys' fees.

88 Sec. 3. Section 42-202 of the general statutes is repealed and the
89 following is substituted in lieu thereof:

90 (a) A licensed funeral service establishment shall deposit any money
91 or securities [which] that such establishment receives pursuant to a
92 funeral service contract [, and within] not later than fifteen days [of]
93 after its receipt of such money or securities, in one or more escrow
94 accounts established in accordance with the provisions of this section.
95 Not later than thirty days after receiving funds from a licensed funeral
96 service establishment, the escrow agent shall send the consumer
97 written verification that the funds have been deposited in accordance
98 with the provisions of this section.

99 (b) (1) Each escrow account established pursuant to this section shall
100 be administered and maintained by an escrow agent [. The funeral
101 service establishment which deposits money or securities in such
102 escrow account shall appoint such agent who] designated in the
103 funeral service contract.

104 (2) The funeral service establishment shall enter into a contract with
105 the escrow agent designated in the funeral service contract, either
106 directly or through an association of funeral directors or other entity.
107 Such contract with the escrow agent shall contain provisions that (A)
108 clearly indicate all fees to be charged by the escrow agent to the escrow
109 account and whether or not any portion of such fees will be shared
110 with any association of funeral directors or other entity, and (B)
111 explain the duties and responsibilities of the escrow agent, including,

112 but not limited to, a provision stating that the escrow agent may only
113 invest such funds in accordance with the provisions of subsection (c) of
114 this section and may only dispense such funds in accordance with the
115 provisions of this chapter. A copy of the contract shall be provided to
116 the purchaser of funeral services, property or merchandise upon
117 request.

118 (3) A designated escrow agent shall be one of the following: [(1)] (A)
119 A national banking association; [(2)] (B) a state bank and trust
120 company; [(3)] (C) a federal or state chartered savings bank; [(4)] (D) a
121 federal or state chartered savings and loan association; [(5)] (E) a
122 licensed insurance company; [,] or [(6)] (F) a registered broker-dealer.
123 [No such institution shall be appointed as an agent unless such
124 institution is authorized by law to act as an escrow agent.]

125 (c) Assets held in escrow accounts established pursuant to this
126 section shall be invested in one or more of the following: (1) Deposit
127 accounts insured by the Federal Deposit Insurance Corporation; (2)
128 accounts insured against loss of principal by an agency or
129 instrumentality of the United States government; (3) bonds in which
130 savings banks in this state may, by law, invest; (4) bonds of the United
131 States or any agency thereof or of this state or any municipality of this
132 state; or (5) any other deposit account, insurance contract, or security
133 of a quality, safety and expense comparable to those set forth in this
134 subsection.

135 (d) All interest, dividends and other income earned on the amounts
136 deposited in an escrow account pursuant to this section shall be
137 retained in such escrow account and credited, less any administration
138 expenses, to the respective interests of those persons for whose benefit
139 the escrow account is maintained. Amounts in an escrow account shall
140 be removed from such account only as provided in sections 42-200 to
141 [42-206] 42-207, inclusive, as amended by this act. Each party to a
142 funeral service contract shall receive an annual statement of the
143 [amount] amounts credited and the amount of all expenses charged to
144 such party's escrow account, and the annual rate of return on such

145 funds after expenses. Such statement shall include the name and
146 address of the escrow agent.

147 (e) If a purchaser of funeral services, property or merchandise
148 defaults in making payments required under the terms of such
149 contract, or if the purchaser or the person responsible for making
150 funeral arrangements for a deceased beneficiary under section 45a-318
151 fails to have the funeral service establishment provide services, the
152 funeral service establishment may retain any origination fee and any
153 costs actually and reasonably incurred by such establishment in the
154 performance of the contract as liquidated damages, provided the sum
155 of the amount retained as an origination fee and the amount retained
156 to pay for costs incurred by the funeral establishment in the
157 performance of the contract shall not exceed an amount equal to five
158 per cent of the amount in the escrow account at the time the purchaser
159 of funeral services defaults in making such payments, and provided
160 further that the funeral service contract specifically allows for such
161 liquidated damages. The balance of any amount remaining in the
162 escrow account shall be paid by the escrow agent to such purchaser.
163 [upon request.]

164 (f) A person, firm or corporation licensed in accordance with the
165 provisions of chapter 385 which enters into a funeral service contract
166 shall furnish the agent of an escrow account established in accordance
167 with the provisions of this section with the name of the purchaser of
168 such services, property or merchandise, the address and name of the
169 beneficiary of the funeral service contract and the amount contracted
170 for. [, together with a copy of the contract listing the services, personal
171 property or merchandise to be furnished by the funeral service
172 establishment.] Nothing in this section shall prohibit the commingling
173 within an escrow account of the money or securities received under
174 more than one funeral service contract for the purpose of management
175 and investment of funds in such escrow account provided the escrow
176 agent maintains a separate accounting of each escrow account.

177 (g) A funeral service contract shall provide that, if the particular

178 merchandise provided for in the contract is not available at the time of
179 death, the funeral service establishment shall furnish merchandise
180 similar in style and at least equal in quality of material and
181 workmanship to the merchandise provided for in the contract.

182 Sec. 4. Section 42-203 of the general statutes is repealed and the
183 following is substituted in lieu thereof:

184 Funds held in an escrow account in accordance with the provisions
185 of a funeral service contract shall remain intact unless such funds are
186 commingled in accordance with the provisions of subsection (f) of
187 section 42-202, as amended by this act, or the purchaser of funeral
188 services, property or merchandise defaults in making payments
189 required under the terms of the contract, as provided in subsection (e)
190 of section 42-202, as amended by this act, or until the services
191 contracted for have been performed or the contracted for property or
192 merchandise has been delivered. Upon submission to the escrow
193 agent, by the funeral service establishment, of [proof] an affidavit by
194 the person responsible for making funeral service arrangements for a
195 deceased beneficiary that the services, personal property and
196 merchandise contracted for have been fully performed or delivered,
197 the escrow agent shall pay to such funeral service establishment the
198 amounts [deposited therein pursuant to such funeral service contract,
199 and all income earned thereon and retained in the escrow account]
200 duly charged for such rendered services, personal property or
201 merchandise. The escrow agent shall transfer any surplus funds to the
202 purchaser's estate unless the contract provides otherwise or the
203 beneficiary was a recipient of the Title XIX Medicaid program at the
204 time of death, in which case the escrow agent shall transfer any
205 surplus funds to the State Treasurer. If, for any reason, the funeral
206 service establishment which has entered into a funeral service contract
207 for the sale of services, personal property, or merchandise and which
208 has deposited the funds into an escrow account in accordance with the
209 provisions of sections 42-200 to [42-206] 42-207, inclusive, as amended
210 by this act, fails to meet its obligation under such contract promptly
211 after the death of the person to be benefited, the [family, the next of

212 kin, or the legal representative of the deceased] person responsible for
213 making funeral arrangements for a deceased beneficiary, having
214 provided for such services, personal property or merchandise on
215 behalf of the deceased person, [may] shall receive from the escrow
216 agent the amount [of money in such escrow account] charged for such
217 services, personal property or merchandise. An affidavit [which] that
218 states [that] services have been performed or property delivered,
219 signed by [a member of the family, next of kin, or legal representative
220 of the deceased] the person responsible for making funeral
221 arrangements for a deceased beneficiary, and by the funeral service
222 establishment which has provided such services, personal property or
223 merchandise, and which is delivered to the escrow agent shall be
224 sufficient to authorize an escrow agent, acting alone, to make such
225 payment without liability to the person making the deposit of such
226 money into the escrow account or to any other person. Nothing
227 contained in this section shall relieve the funeral service establishment
228 of its liability for nonperformance.

229 Sec. 5. Section 42-207 of the general statutes is repealed and the
230 following is substituted in lieu thereof:

231 An irrevocable funeral service contract may be entered into in which
232 the amount held in escrow may be disbursed only upon the death of
233 the beneficiary and upon submission by the funeral service
234 establishment of an affidavit by the person responsible for making
235 funeral arrangements for a deceased beneficiary that the services,
236 personal property or merchandise contracted for have been fully
237 performed or delivered, provided such a contract does not exceed [five
238 thousand four hundred] ten thousand dollars and all interest
239 accumulates to the escrow account and is inaccessible to the
240 beneficiary. Such irrevocable funeral service contracts may be
241 transferred from one funeral service establishment to another upon
242 request of the beneficiary. The purchase of an irrevocable funeral
243 service contract shall not preclude an individual from purchasing
244 other funeral service contracts that are revocable. Upon the death of a
245 beneficiary who is a recipient of the Title XIX Medicaid program, any

246 surplus funds held in an irrevocable funeral service contract escrow
247 account after all funeral and burial expenses have been paid in full,
248 shall be paid to the State Treasurer.

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